

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.3831 of 2006

Mrs.Aaisabi Munshi & ors.

Petitioners

Vs.

Ghatkopar Education Welfare Society
and their Trustees

Respondents

Mr.R.V.Govilkar i/b M/s.Bhuta & Associates for
petitioners.

Mr.M.S.Menon for respondents.

CORAM: B.H.MARLAPALLE,J.

June 14, 2006.

P.C.

. Heard Mr.Govilkar, the learned counsel for the
petitioners. The petition challenges the impugned
order dated 17/3/2006 by which the learned Judge of
the Bombay City Civil Court declined to condone the
delay in filing the written statement. The learned
Judge of the lower Court recorded that there was no
case of exceptional circumstances made out to invoke
her discretionary powers as held by the Apex Court in
the case of Kallash Vs.Nonnku **[2005 (5) All.M.R.
(SC) 689]**. I have gone through the affidavit filed
by the defendant in support of the notice of motion

which came to be rejected by the impugned order and I am satisfied that the learned Judge of the City Civil Court was right in holding that there was no case of exceptional circumstances made out by the defendants.

. It has been pointed out by the learned counsel for the plaintiffs that the impugned order was challenged in A.O. No.323 of 2006 by the present petitioners and the same was dismissed as withdrawn on 18/5/2006. It is also pointed out that from other orders arising from the very same Suit i.e. S.C. Suit No.837 of 2005 the petitioners have gone on the Original Side and filed Writ Petition No.1457 of 2006.

. Mr.Govilkar, the learned counsel for the petitioners submitted that there were in fact genuine and exceptional reasons for the delay caused in filing the written statement but they were not explained in the affidavit in support of the notice of motion. If that be so, the petitioner may apply to the Court below afresh explaining the circumstances resulting into delay to make out a case of exceptional circumstances.

. The petition is disposed off with liberty to approach the Court below afresh.

(B.H.MARLAPALLE,J.)